

REMARKS

In the non-Final Office Action mailed March 6, 2009, claims 1, 2, 9-21, 23-39 and 55-58 were pending. Claims 23 and 24 were withdrawn from consideration, and claims 1, 2, 8-21, 25-39 and 55-58 were rejected. Claim 1 is amended above. Reconsideration of the present application as amended and including claims 1, 2, 9-21, 23-39 and 55-58 is respectfully requested.

Claims 1, 2, 9-21, 25-39 and 55-58 stand rejected under 35USC 103(a) as being unpatentable over U.S. Patent No. 2,699,774 to Livingston in view of U.S. Patent No. 4,854,312 to Raftopoulus. The Examiner acknowledges that Livingston does not "explicitly recite that the device may have a configuration wherein each of the members have a curved configuration along a longitudinal axis that extends between a leading end and a trailing end of the device." Raftopoulus was cited to "teach providing a curved configuration in order to accommodate curvature of the bone. See, e.g., Fig. 9 and col. 2, lines 34-37. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the device of Livingston with members having a curved configuration along an axis extending between leading and trailing ends of the device, in view of Raftopoulos et al., in order to accommodate curvature of the bone."

Claim 1 is amended above to recite, among other features, "an elongated stabilization device including an elongated outer member and an elongated inner member movably received in said outer member, said inner and outer members each including a curved configuration along a longitudinal axis that extends along a length of said stabilization device between a leading end and an opposite trailing end of said stabilization device, said stabilization device further maintaining said curved configuration when in a collapsed insertion configuration and an expanded engagement configuration, wherein said curved configuration of each of said inner and outer members forms an arc along a length of said stabilization device and said arc and said longitudinal axis are co-linear along said length...."

Neither Livingston nor Raftopoulos disclose or teach these features associate with the inner and outer members. Livingston discloses that rod 37 is linear when shell 19 is collapsed and when shell 19 is enlarged. Raftopoulos was asserted to disclose a device (e.g. 70) and "teach providing a curved configuration in order to accommodate the curvature of the bone. See e.g., Fig. 9 and col. 2, lines 34-37." However, it is respectfully submitted that Raftopoulos fails to

teach or disclose teaches a configuration “wherein said curved configuration of each of said inner and outer members forms an arc along a length of said stabilization device and said arc and said longitudinal axis are co-linear along said length” as recited in claim 1.

In Fig. 9 of Raftopoulos, there is disclosed a “main member 70 that has an arcuate shape to generally conform to the curvature of the outer layer of bone, generally defining the intramedullary cavity. Similarly, main member 70 has a non-straight or articulated channel 71 extending along the length thereof wherein the second section 75 is inclined or angled with respect to base section 73.” See col. 4, lines 16-22. The purposes of main member 70 is to receive a second member 30 that is inserted into channel 71 and protrude laterally from main member 70, with the channel 71 in main member 70 arranged so that second member 30 is forced to diverge from the main member 70 as second member 30 is inserted through channel 71 in order to fix the bone in which main member 70 is positioned. See col. 3 lines 27-45 and col. 2, lines 3-13. Therefore, Raftopoulos fails to disclose any curved configuration of each of said inner and outer members that forms an arc along a length of the stabilization device where the arc formed by each of the inner and outer members and the longitudinal axis of the stabilization device are co-linear along the length of the stabilization device. Instead, any arc formed by second member 30 of Raftopoulos diverges away from any arc formed by the main member 70, and the arcs of main member 70 or second member 30 cannot be co-linear with the longitudinal axis of the stabilization device along the length of the stabilization device. In fact, Raftopoulos teaches away from such an arrangement since second member 30 must diverge from main member 70 in order to fix the bone. Therefore, the references fail to teach or suggest claim 1, and withdrawal of the rejection of claim 1 is respectfully requested.

Pending claims 2, 9-21, 57 and 58 depending from claim 1 distinguish Livingston at least for the reasons claim 1 does and for other reasons. For example, claim 12 recites “wherein said inner member includes a leading end nose with a tapered profile and said leading end nose is enlarged relative to a body portion of said inner member, said body portion extending from said leading end nose to an opposite trailing end portion of said inner member....” Also, claim 58 recites “wherein said inner member includes a body portion extending between a leading end nose and an opposite trailing end portion, each of said leading end nose and said trailing end portion being enlarged relative to said body portion to engage said outer member in said expanded engagement configuration.” There is no teaching of the inner member having these


features associated with the leading end nose enlarged relative to the body portion of the inner member in either Livingston or Raftopoulos. Therefore, claims 12 and 58 are independently allowable. Withdrawal of the rejection of claims 2, 9-21, 57 and 58 depending from claim 1 is respectfully requested.

Livingston and Raftopoulos do not disclose or teach independent claim 25. Claim 25 recites, among other features, "wherein said inner member and said outer member each include a curved configuration along said longitudinal axis that extends along said length of said stabilization device between said leading end and said opposite trailing end of said stabilization device, and in said curved configuration each of said inner member and said outer member forms an arc that is co-linear with said longitudinal axis along said length of said stabilization device." As discussed above with respect to claim 1, Livingston and Raftopoulos fail to disclose or teach these features of the inner and outer member. Thus, claim 25 is allowable and withdrawal of the rejection thereof is respectfully requested.

Pending claims 26-39 and 55-56 depending from claim 25 distinguish Livingston at least for the reasons claim 25 does. Furthermore, claims 30 and 56 are allowable for the reasons provided above with respect to claims 12 and 58. Withdrawal of the rejection of claims 26-39 and 55-56 depending directly or indirectly from claim 25 is respectfully requested.

Reconsideration of the present application as amended and including claims 1, 2, 9-21, 23-39 and 55-58 is respectfully requested. The application is believed in condition for allowance, and a Notice of Allowance is hereby solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:

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